

AMENDED IN ASSEMBLY MAY 12, 2010  
AMENDED IN ASSEMBLY MARCH 25, 2010  
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2100**

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**Introduced by Assembly Member Coto**

February 18, 2010

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An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2100, as amended, Coto. Taxation: sweetened beverages: Pediatric Obesity Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, ~~on and after January 1, 2011,~~ impose a tax *on every distributor, as defined,* at the rate of one cent (\$0.01) per teaspoon of added *caloric* sweetener in the bottled sweetened beverage or concentrate ~~upon every person who makes the first sale in this state of bottled sweetened beverage or concentrate and on every person who uses or consumes, or places into a vending machine or retail stock, untaxed bottled sweetened beverage or concentrate, as provided sold or offered for sale to a retailer in this state, and on a retailer who sells bottled sweetened beverages or concentrate in this state to consumers on which the tax has not been paid by a distributor.~~ This bill would exempt from the tax ~~the first sale in this state of concentrate to a~~

~~sweetened beverage manufacturer, as provided, and any sale, use, or consumption which in this state of bottled sweetened beverages or concentrate that~~ the state is prohibited from taxing, as provided. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refund and administrative costs, in the Pediatric Obesity Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Education for distribution of grants to eligible school districts for the purpose of employing a school nurse or health educator and creating a healthful diet and lifestyle plan for the school.

*This bill would require the Director of Finance to transfer, an unspecified amount from the General Fund to the board, to implement the collection of the taxes imposed by this act, and would require that amount to be repaid by the board with interest from the taxes collected.*

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages and obesity.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote:  $\frac{2}{3}$ . Appropriation: ~~no~~-yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Over 64 percent of adults in the United States are overweight and 17 percent of children and adolescents ages 2 to 19, inclusive, are overweight. ~~Overweight~~ *Being overweight* is a significant risk factor for the development of diabetes. Twenty-three percent of children and adults have diabetes and rates continue to explode.

(b) Currently, over 5.6 million adults in California, which equals 21.2 percent, are obese and an additional half million adolescents, which equals 14.2 percent, are overweight or obese. ~~The costs of~~ *It is estimated that* physical inactivity, obesity, and ~~overweight~~ *costs being overweight cost* California residents over \$28 billion per year.

(c) An average 12-ounce serving of soda contains 10 teaspoons of sugar, whereas the United States Department of Agriculture recommends that a person eating a 2,200-calorie diet should consume no more than 12 teaspoons of refined sugar per day.

(d) There is an overwhelming link between obesity and the consumption of sweetened beverages. The average American consumes 278 ~~additional~~ *more* calories than they did in 1977. One hundred twenty of these calories can be attributed to sugar sweetened beverages.

(e) *Children who frequently or excessively consume beverages high in sugar are at increased risk for dental caries.*

(f) *Untreated dental caries can lead to pain, infection, tooth loss and, in severe cases, even death. They can slow normal growth and development by restricting nutritional intake. Children who are missing teeth may have chewing problems that limit their food choices and result in nutritionally inadequate diets.*

(e)

(g) Adam Smith, in 1776, declared “Sugar, rum and tobacco are commodities which are nowhere necessities of life, which are become objects of almost universal consumption, and which are therefore extremely proper subjects of taxation.”

SEC. 2. Part 14.5 (commencing with Section 32600) is added to Division 2 of the Revenue and Taxation Code, to read:

## PART 14.5. SWEETENED BEVERAGE TAX LAW

32600. This part shall be known and may be cited as the Sweetened Beverage Tax Law.

32601. For purposes of this part:

~~(a) “Added sweetener” means any additive that enhances the sweetness of a beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice that is a component of the beverage.~~

~~(b)~~

(a) “Beverage container” means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of the container.

~~(c)~~

(b) “Bottled sweetened beverage” means a sweetened beverage contained in a beverage container.

(c) “Caloric sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose corn sweetener, glucose, other sugars, and fruit juice concentrates. “Caloric sweetener” excludes noncaloric sweeteners. “Caloric” means a substance that adds calories to the diet of a person who consumes that substance.

(d) “Concentrate” means a sweetened beverage syrup, simple syrup, powder, or base product for mixing, compounding, or making sweetened beverages.

~~(e) “Concentrate manufacturer” means any person that manufactures concentrate for sale to distributors, dealers, consumers, or others in this state.~~

(e) “Consumer” means a person who purchases a bottled sweetened beverage or concentrate for consumption and not for resale.

(f) “Distributor” means any person, including a manufacturer and wholesale dealer, who receives, stores, manufactures, bottles, or distributes bottled sweetened beverages or concentrate to retailers doing business in the state, whether or not that person also sells these products to consumers.

~~(g)~~

(g) “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or

1 not reconstituted, regardless of animal source or butterfat content,  
2 or dehydrated natural milk, whether or not reconstituted.

3 ~~(g)~~

4 (h) “Natural fruit juice” means the original liquid resulting from  
5 the pressing of fruit, the liquid resulting from the reconstitution of  
6 natural fruit juice concentrate, or the liquid resulting from the  
7 restoration of water to dehydrated natural fruit juice.

8 ~~(h)~~

9 (i) “Natural vegetable juice” means the original liquid resulting  
10 from the pressing of vegetables, the liquid resulting from the  
11 reconstitution of natural vegetable juice concentrate, or the liquid  
12 resulting from the restoration of water to dehydrated natural  
13 vegetable juice.

14 ~~(i)~~

15 (j) “Nonalcoholic beverage” means all beverages not subject to  
16 tax under Part 14 (commencing with Section 32001).

17 (k) “Noncaloric sweetener” means any noncaloric substance  
18 suitable for human consumption that humans perceive as sweet  
19 and includes, without limitation, aspartame, saccharin, stevia, and  
20 sucralose. “Noncaloric” means a substance that does not add  
21 calories to the diet of a person who consumes the substance.

22 (l) “Person” means an individual, trust, firm, joint stock  
23 company, business concern, corporation, including, but not limited  
24 to, a government corporation, partnership, limited liability  
25 company, and association. “Person” also includes any city, county,  
26 city and county, district, commission, the state, or any department,  
27 agency, or political subdivision thereof, any interstate body, and  
28 the United States and its agencies and instrumentalities to the  
29 extent permitted by law.

30 ~~(j)~~

31 (m) (1) “Powder” or “base product” means a mixture of  
32 ingredients in other than liquid form, used in making, mixing, or  
33 compounding sweetened beverages by mixing this product with  
34 water, ice, syrup, or simple syrup, fruits, vegetables, fruit juice,  
35 vegetable juice, or any other product suitable to make a sweetened  
36 beverage.

37 (2) “Powder” or “base product” does not include any of the  
38 following:

39 (A) Any product sold in powder or other nonliquid mixture form  
40 that is solely used in preparing coffee or tea.

- 1 (B) Any product sold in powder form for consumption by infants  
2 and which is commonly referred to as “infant formula.”
- 3 (C) Any product sold in powder form for use for weight  
4 reduction.
- 5 (D) Any product containing milk or milk products.
- 6 (E) Any frozen concentrate or freeze-dried concentrate to which  
7 only water is added to produce a sweetened beverage containing  
8 more than 10 percent natural fruit juice or more than 10 percent  
9 natural vegetable juice.
- 10 (F) Any powder or other base product that is sold and used for  
11 the purpose of an individual consumer mixing a sweetened  
12 beverage.
- 13 (n) *“Retailer” means any person who sells in this state bottled*  
14 *sweetened beverages or concentrate to consumers whether or not*  
15 *that person is also a distributor as defined in this section.*
- 16 ~~(k)~~
- 17 (o) “Sale” means the transfer of title or possession for  
18 consideration in any manner or by any means whatever.
- 19 ~~(t)~~
- 20 (p) “Simple syrup” means a mixture of sugar and water.
- 21 ~~(m)~~
- 22 (q) (1) “Sweetened beverage” means any—sweetened  
23 nonalcoholic beverage sold for human consumption *that contains*  
24 *any added caloric sweetener* including, but not limited to, the  
25 following: soda water, ginger ale, root beer, all beverages  
26 commonly referred to as cola, lime, lemon, lemon-lime, and other  
27 flavored beverages, including any fruit or vegetable beverage  
28 containing 10 percent or less natural fruit juice or natural vegetable  
29 juice, and all other drinks and beverages commonly referred to as  
30 “soda,” “soda pop,” and “soft drinks.”
- 31 (2) “Sweetened beverage” does not include any of the following:
- 32 (A) Any nonalcoholic beverage sweetened entirely with ~~artificial~~  
33 ~~sweeteners that do not add calories to the beverage.~~ *noncaloric*  
34 *sweeteners.*
- 35 (B) Any product sold in liquid form for consumption by infants,  
36 which is commonly referred to as “infant formula.”
- 37 (C) Any product sold in liquid form for use for weight reduction.
- 38 (D) Water, to which no natural sweeteners have been added.
- 39 (E) Any product containing milk or milk products.

1     ~~(n) “Sweetened beverage manufacturer” means any person who~~  
2     ~~bottles, cans, or otherwise fills a bottled sweetened beverage.~~

3     ~~(o)~~

4     ~~(r) “Syrup” means the liquid mixture of ingredients used in~~  
5     ~~making, or mixing, mixing, or compounding sweetened beverages~~  
6     ~~by mixing the syrup with water, simple syrup, ice, fruits,~~  
7     ~~vegetables, fruit juice, vegetable juice, or any other product suitable~~  
8     ~~to make a sweetened beverage.~~

9     ~~(p)~~

10    ~~(s) “Teaspoon” means 4.2 grams.~~

11    ~~32602. (a) A tax is hereby imposed at the rate of one cent~~  
12    ~~(\$0.01) per teaspoon of added sweetener in a bottled sweetened~~  
13    ~~beverage on every person who does the following:~~

14    ~~(1) Makes the first sale in this state of a bottled sweetened~~  
15    ~~beverage.~~

16    ~~(2) Uses or consumes an untaxed bottled sweetened beverage~~  
17    ~~in this state.~~

18    ~~(3) Places in this state an untaxed bottled sweetened beverage~~  
19    ~~in a vending machine or in retail stock for the purpose of selling~~  
20    ~~the bottled sweetened beverage to consumers.~~

21    ~~(b) A tax is hereby imposed at the rate of one cent (\$0.01) per~~  
22    ~~teaspoon of added sweetener in the concentrate on every person~~  
23    ~~who does the following:~~

24    ~~(1) Makes the first sale in this state of concentrate.~~

25    ~~(2) Uses or consumes untaxed concentrate in this state.~~

26    ~~(3) Places in this state untaxed concentrate in a vending machine~~  
27    ~~or retail stock for the purpose of selling a sweetened beverage to~~  
28    ~~consumers.~~

29    ~~(e) There is exempt from the tax imposed under subdivision~~  
30    ~~(b), the sale of untaxed concentrate to a sweetened beverage~~  
31    ~~manufacturer, whose sale of the concentrate or the bottled~~  
32    ~~sweetened concentrate is subject to tax under subdivision (a) or~~  
33    ~~(b).~~

34    ~~32602. (a) There is hereby imposed a tax on every distributor~~  
35    ~~at the rate of one cent (\$0.01) per teaspoon of added caloric~~  
36    ~~sweetener in a bottled sweetened beverage or concentrate sold or~~  
37    ~~offered for sale to a retailer in this state.~~

38    ~~(b) A retailer who sells bottled sweetened beverages or~~  
39    ~~concentrate in this state to a consumer, on which the tax imposed~~

1 *by this section has not been paid by a distributor, is liable for the*  
2 *tax imposed in subdivision (a) at the time of sale to a consumer.*

3 *(c) Every distributor subject to the tax imposed pursuant to*  
4 *subdivision (a) shall separately state the amount of tax due to the*  
5 *board by the distributor on the receipt, invoice, or other form of*  
6 *accounting of the transaction given to the retailer.*

7 32603. There is exempt from the ~~tax~~ taxes imposed by this  
8 part, the sale, use, or consumption in this state of bottled sweetened  
9 beverage or concentrate where the state is prohibited from taxing  
10 that sale, use, or consumption under the Constitution or laws of  
11 the United States or under the Constitution of this state.

12 32604. (a) The board shall administer and collect the ~~tax~~ taxes  
13 imposed by this part pursuant to the Fee Collection Procedures  
14 Law (Part 30 (commencing with Section 55001)). For purposes  
15 of this part, the references in the Fee Collection Procedures Law  
16 to “fee” shall include the ~~tax~~ taxes imposed by this part and  
17 references to “feepayer” shall include a person required to pay the  
18 any tax imposed by this part.

19 ~~32605.— Each person required to pay the tax shall prepare and~~

20 *(b) (1) The board may prescribe, adopt, and enforce regulations*  
21 *relating to the administration and enforcement of this part,*  
22 *including, but not limited to, collections, reporting, refunds, and*  
23 *appeals.*

24 *(2) The board may prescribe, adopt, and enforce any emergency*  
25 *regulations as necessary to implement this part. Any emergency*  
26 *regulation prescribed, adopted, or enforced pursuant to this section*  
27 *shall be adopted in accordance with Chapter 3.5 (commencing*  
28 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*  
29 *Government Code, and, for purposes of that chapter, including*  
30 *Section 11349.6 of the Government Code, the adoption of the*  
31 *regulation is an emergency and shall be considered by the Office*  
32 *of Administrative Law as necessary for the immediate preservation*  
33 *of the public peace, health and safety, and general welfare.*

34 32605. (a) Each person required to pay the tax imposed under  
35 this part shall register with the board. Every application for  
36 registration shall be made upon a form prescribed by the board  
37 and shall set forth the name under which the applicant transacts  
38 or intends to transact business, the location of his or her place or  
39 places of business, and any other information as the board may



1 *require. An application for an account shall be authenticated in*  
2 *a form or pursuant to a method as may be prescribed by the board.*

3 (b) *Each person required to pay the tax shall prepare and file*  
4 *with the board a return using electronic media in the form*  
5 *prescribed by the board containing information as the board deems*  
6 *necessary or appropriate for the proper administration of this part.*  
7 *The return shall be filed on or before the last day of the calendar*  
8 *month following the calendar quarter to which it relates, together*  
9 *with a remittance payable to the board for the amount of tax due*  
10 *for that period. Returns shall be authenticated in a form or pursuant*  
11 *to a method as may be prescribed by the State Board of*  
12 *Equalization.*

13 32606. The board may prescribe those forms and reporting  
14 requirements as are necessary to implement the tax, including, but  
15 not limited to, information regarding the total amount of added  
16 caloric sweetener, the total amount of bottled sweetened beverage  
17 drinks and concentrate sold, and the amount of tax due.

18 ~~32607. Every payment on a delinquent tax owed pursuant to~~  
19 ~~this part shall be applied as follows:~~

20 ~~(a) First, to any interest due on the tax.~~

21 ~~(b) Second, to any penalty imposed by this part.~~

22 ~~(c) Third, the balance, if any, to the tax due.~~

23 32608. The board shall, upon appropriation, be reimbursed for  
24 expenses incurred in the administration and collection of the tax  
25 imposed by this part.

26 32609. (a) There is hereby created a fund in the State Treasury  
27 called the Pediatric Obesity Fund. The Pediatric Obesity Fund  
28 shall consist of all taxes, interest, penalties, and other amounts  
29 collected pursuant to this part, less refunds and reimbursement to  
30 the board for expenses incurred in the administration and collection  
31 of the tax.

32 (b) All moneys in the Pediatric Obesity Fund shall, upon  
33 appropriation by the Legislature, be allocated to the Department  
34 of Education for distribution of grants to eligible school districts  
35 for the purpose of employing a school nurse or health educator  
36 and creating a healthful diet and lifestyle plan for the school.

37 SEC. 3. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

6 *SEC. 4. (a) The Director of Finance shall transfer, as a loan,*  
7 *up to \_\_\_\_\_ dollars (\$\_\_\_\_) from the General Fund to the State*  
8 *Board of Equalization, to implement the collection of the taxes*  
9 *imposed by this act.*

10 *(b) Any loan made pursuant to subdivision (a) shall be repaid*  
11 *on or before \_\_\_\_\_, with interest at the pooled money investment*  
12 *rate, from taxes collected pursuant to this act.*

13 ~~SEC. 4.~~

14 *SEC. 5. This act provides for a tax levy within the meaning of*  
15 *Article IV of the Constitution and shall go into immediate effect.*  
16 *However, the provisions of this act shall become operative on*  
17 ~~January 1, 2011~~ *the first day of the first calendar quarter*  
18 *commencing more than six months after the effective date of this*  
19 *act.*